



# North Fork Mono Tribe

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## TRIBAL WATER RIGHTS

### A Position Paper

What is tribal water rights? What is water rights? Who has water rights? Who thinks they have water rights? What water comes under authority for distribution to users? Why IS our water sacred?

Tribal water rights starts with our creation stories, water stories, animal stories and old stories. Our storytellers, recorded by early researchers tell of our existence at the water heads to the creeks and rivers. They tell how our land was formed with water by Creator with coyote, falcon and crow in-charge.

These are not mythological stories as the white researchers professed they were. These stories are and were passed down for thousands of years before being recorded in the late 1800's and early 1900's. Yet they coincided with the Bible, written thousands of years before whiteman got here.

Water is an element running all through our stories. Place names included water, village names included water and we have water songs. Puzaotes, was a village name, named after the year-round spring that ran out of the ground near Lion's Point. Puzaotes is the name for the spring eagle aka bald eagle. The Bald Eagle lived at this spring. He could see the San Joaquin River from there. The river is where he fished, made his living and raised his family.

The Mono have two sides to their political system. The wet and the dry, the water and the land sides. In charge of the dry/land side is Esha the coyote (Creator's puk/pet). In charge of the wet/water side is puzaotes the bald eagle (Creator's messenger). Under esha is quint-na the golden eagle; pu'na, redtail hawk and others. Under puzaotes is pahubich the black bear as well as kingfisher and others. The Mono is patrilineal, meaning they come into the tribe through their father's side.

When Gifford, a researcher from Berkeley, in the 1920's, was shown a boulder by a Mono elder from which pakwe the trout emerged at the head waters of the San Joaquin River he immediately sent letters off to biologists asking if the rainbow trout was native to the western Sierra's. He wanted to

prove or show evidence the Mono was so new to the western Sierra Nevada Mountains that their stories were concocted after the whiteman came to the San Joaquin Valley. He was told in letter response by the biologist that the rainbow and the golden trout were in-fact native. Yet, he never included their response in any of his reports.

Why are stories like these important? Because historian after historian, anthropologist after anthropologist, government official after government official has continued to try to down play or mythologize our stories into fairly tales creating illusions of grandeur toward our connection to the elements, minerals, resources, the land and our water.

Rights to water, what rights? Surface water is what is fought over. More users and abusers that water available. Utilities and their hydro's, irrigation districts, municipalities, farmers and anything left over, the fish. Surface water comes from precipitation and from ground water. Ground water and precipitation are not regulated. No one has water rights over either of these two. Creator provides the precipitation and Mother Earth provides the ground water.

Citizens own the water from their private wells and even they are not regulated. In other words anyone can take your well water by tapping into it at a higher level. So then begins the fight for tribal water rights. All water ways have springs attached to them, even as runoff drainage's one usually finds springs along the drainage. The rancher looked for these springs when laying claim to our land. Today there are huge corporations wanting to lay claim to unattached ground water as well as the precipitation.

How is it the State claims water rights on all water in the State whether on private, county, state, federal or tribal lands?

Back in 1832 when Colonel J. J. Warner visited the valley with the Ewing Young expedition, he observed more Indians "subsisting on natural products from the soils and waters" than anywhere else in the country. The Indians, he reported, had plentiful wild game, fish, nuts and seeds - and they were experts in catching fish and snaring game. A couple of years later, Joseph Walker came in through Yosemite down into the Valley to buy horses and cattle for his expedition.

In the mid 1800's a company known as Miller-Lux ran cattle from the Los Angeles/San Diego area north through the San Joaquin Valley and coastal areas, servicing the townships/cities of Monterey, San Jose, San Francisco and Sacramento. In order to get his cattle through the Valley he had to give up some of that beef to all the Yokotch tribal villages along the way.

It is documented they struggled to get enough beef to market at the larger townships because of the Indians along the way. It is also stated, they were afforded the right to water. It wasn't free.

There were many skirmishes and physical confrontations with the Indians of the San Joaquin Valley and the Sierra mountains from as early as 1769 to 1864. Most of these battles, while lasting no more than one to four days, were considered a draw or the Indians claimed victory as the various intruders retreated. In 1851-52 treaties were negotiated with tribal groups all over the State. These treaties were lobbied against by California because the land given to the tribes was prime foothill land. Plus they retained cultural resource rights, fishing and hunting rights, and water and mineral rights.

The treaties went unratified, and were secretly tabled for 53 years and then vetoed by the United States Senate in 1905. Skirmishes and conflicts continued in 1856 in Tulare and 1864 in Owens Valley. In 1868, sixteen years after the treaties were secretly tabled with no intention of any follow through by the United States Government, San Joaquin Valley tribes were contacted by government officials telling the Chiefs that they gave their word and signed treaty documents that there would be peace and freedom. The Chiefs were told to, "get their renegades under control!"

In 1864, with the Indians in-tow and many now on reservations, Miller-Lux applied to the State laying claim of all water ways in California. Then in the early 1930's Miller-Lux sold their water rights to the State of California.

The Treaty of Guadalupe Hidalgo which ceded California to the United States, guaranteed Mexican land titles in the ceded territory as they stood at the time of the transfer. Under Spanish and Mexican law Indians had certain rights to the lands they occupied and could not legally be evicted from them. It would seem that this right was an interest in land and one entitled to protection under the provisions of the treaty of Guadalupe Hidalgo.

The Mexican land grants were ceded, why the Indian rights were not an today California Governor's don't even want to recognize the Treaty of Guadalupe Hidalgo.

Post Unratified Treaty discussion in Washington went like this, "Moreover, the laws of Spain as to Indian land rights in the territory acquired via Mexico were precisely the same as in the territory of Louisiana in the lands acquired from Spain via France. The laws of France as to Indian lands in America did not differ essentially from those of Spain, or for that matter of England, though the English Colonists early discovered the practical advantages of buying the Indian rights."

During our regional tribal water meetings we constantly heard terms such as aboriginal water rights, adjudication, federal reserved water rights, the Winters Doctrine and quantified reserved water rights. The Winters Doctrine established the reserved rights doctrine, setting the priority date of water rights for reservations at the date the reservation was established. Even though most tribal groups were from the land for which they were given a landbase, so did the Doctrine negate their aboriginal water rights or did it promulgate it?

The Doctrine established 'practicably irrigable acreage' a standard for quantifying reserved water rights. Discussion of aboriginal water rights prior to the Doctrine is still being highly debated.

Despite the seniority of tribal reserved rights, Indian tribes encounter difficulties in using their water supplies due to the Endangered Species Act and other applicable federal environmental laws. Indian tribes that seek to use their reserved water supplies find themselves at odds over the developmental usage of their water. Existing water supplies commonly are committed to current non-Indian users that are impractical to dislodge in a negotiating setting.

While the use of the Winters Doctrine, rights on the reservation generally has been free of controversy, transferring water use off the reserve has proven contentious. Tribes have not been authorized to sell their reserved water. With Congressional approval they can lease water for use off their reservation land. Why they need Congressional approval is still being debated by Indian litigators. Yet, non-Indian water users downstream do not seem to have a problem selling their excess water.

Adjudication's are court determinations of water rights, volumes and priorities. This then brings into light the quantifying of tribal water rights. Quantifying the volume of the right is based on the purpose of the reservation.

So, when everything is said and done, if you have tribal water rights do you have equal say and determination of your water as the Federal Bureau of Reclamation and the State Board of Water Resources? That would be true water rights. The big question is why do so many have their hands in your bucket of water?

Traveling around the State, I hear how many tribes and reservations have taken their water rights back and now are in control of their water as it pertains to their reservation. Yet, in their backyard is their sacred mountain from which some bottling company is extracting their water from their sacred springs and making millions off of it, with no residual to the people of that mountain or spring.

Coming full circle in this position paper, we raise the question, why is our water sacred? My uncle John and aunt Daisy used to tell a story about fishing down in the hole (canyon) of the San Joaquin River where the confluence's of the stream forks come to a head on the River. To get there was steep and treacherous. The bearman had his cave shelter along the canyon wall. Eight and ten foot rattlers were commonly seen and encountered. Fishing down in this hole meant lots and lots of large tasty native trout.

He was told by his elders, when you go there you have to give fish to the black snakes. They come up out of the water and if you don't make an offering they will eat you because you have no escape.

Make your offering if you want a successful fishing trip and to get out safely. So John and Daisy made their offering. Out came the black snakes for the offering. John said it was some of the best fishing he did. He always told the story and he lived to be almost 90 years old.

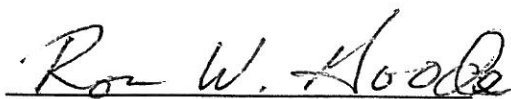
Today, our water and water ways are in trouble. What offerings are our non-Indian water users making back to the river? They cry about their lack of water, but what are they doing about the mis-management of our watershed?

Eight years my tribe spent on the hydro relicensing for Southern California Edison on the San Joaquin River. We met monthly, never saw any farmers there talking about the improvement of our watershed. 15 to 20% of the precipitation is lost because of the brush canopy. Another 5 to 10% is lost down the canyons on evaporation because of the brush. In a drought year that 25% would sustain their operation.

You as the descendants of this land and water, don't forget your stories. Don't forget to make your offerings because those black snakes are real not mythological, only their appearances may very well be in another form. By our example, our brothers in the Agencies may come to have a better understanding of the land and water.

To put a stamp on this position paper, the North Fork Mono has never relinquished their water rights! The Tribe made this statement in the Sierra Nevada Environmental Plan, in our federal acknowledgment petition, in our negotiations with SCE and PG & E on hydro relicensing to FERC and here in the 2009 California Water Plan Update Proceedings.

Respectfully,

A handwritten signature in dark ink, appearing to read "Ron W. Goode". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

Hon. Ron W. Goode  
Tribal Chairman